No. 9/7/86-6 Lab./2141.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Dairy Development Cooperative Federation Ltd., Gohana Road, Milk Plant, Rohtak.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 130 of 1983

between

SHRI KARAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., GOHANA ROAD, MILK PLANT, ROHTAK

Present.—

Shri S.N. Vats, A.R. for the workman.

Shri K.L. Nagpal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Karan Singh and the management of M/s Haryana Dairy Development Co-operative Federation Ltd., Gohana Road, Milk Plant, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. ID/45386-91, dated 5th September, 1983.—

Whether the termination of service of Shri Karan Singh was justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Dairyman on 1st August, 1977 but the respondent choose to terminate his services on 1st May, 1981 in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, it is alleged that the petitioner has not put in 240 days of actual work with the respondent during the last twelve calendar months preceding date of termination and that the strike resorted to by the workman and others from 18th October, 1980 to 18th January, 1981 was illegal and unjustified, because the Managing Director of the management had invited the General Secretary to the workers union for negotiations regarding the demands,—*vide* his letter dated 30th September, 1980 and 1st October, 1980 but the working force resorted to strike without exhausting conciliation and other remedies available under the Industrial Disputes Act, 1947. It is further alleged that the General Manager of the respondent plant at Rohtak had got pasted a notice dated 18th October, 1980 warning the workman not to go on strike otherwise they shall forfeit their claim to service, but even then, the workman did not resume his duties and so he was retrenched from service with effect from 30th April, 1981. It is further alleged that after his termination the workman has remained gainfully employed. Alongwith the reply filed the respondent has appended a charge showing the number of working days actually put in by the petitioner during twelve calendar months preceding his termination.

4. On the pleadings of the parties, the following issues were settled for decision on 9th September, 1984 :—

1. Whether the termination of service of Shri Karan Singh was justified and in order ? If not, to what relief is he entitled ?
2. Whether the case of the workman falls under section 25(B)(ii) of the I.D. Act, 1947 ? If so, to what effect ?
3. Whether the strike resorted to by the workman was illegal and unjustified.

5. The management examined MW-1 Shri Raj Singh, Time Keeper, MW-2 Shri R. P. Chillar, Establishment Assistant, MW-3 Shri R.K. Chabra, General Manager Milk Plant, Rohtak. The workman appeared as his own witness as WW-1.

6. The learned Authorised Representatives of the parties heard.

Issues No. 2 and 3 :

7. Since these issues are akin in nature, they cannot be disposed of in isolation and as such, have been clubbed together for decision. The learned Authorised Representative of the workman Shri Vats vehemently argued that the termination of services of the workman was "retrenched" as defined in section 2(oo) of the said Act, since he did not fall in any of the III excepted categories mentioned in the said section and "retrenchment" could not have been brought about by the respondent without complying with the provisions of section 25-F of the said Act. On the other hand, the learned Authorised Representative of the respondent contended that since the workman had not actually worked for 240 days during the last twelve calendar months preceding date of his termination as is evident from the chart Exhibit MW-1/A duly proved by Shri Raj Singh Time Keeper, the workman cannot bank upon the provisions of section 25-F of the said Act. It is a common case of the parties that there was general strike in the respondent plant from 18th October, 1980 to 18th January, 1981. It is also undisputed that wages for this period were not paid to the workman, probably they were not claimed by him. So, the learned Legal Adviser for the respondent contended that if the strike period is excluded while computing the number of working days, the workman has definitely worked for less than 240 days during the twelve preceding months from the date of his termination. In this context he contended that the case of the workman falls under section 25(b)(2) of the said Act and not under section 25(b)(i) as argued by the learned Authorised Representative of the workman. Section 25(b)(i) and 25(b)(2) 25B. for the purposes of this Chapter,—

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman during a period of twelve calendar month s preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than

(i) One hundred and ninety days in the case of a workman employed below ground in a mine ; and

(ii) two hundred and forty days, in any other case ;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of workman employed below ground in a mine ; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946, or under this Act or under any other law applicable to the industrial establishment ;

(ii) he has been on leave with full wages, earned in the previous years ;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment ; and

(iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.

8. Shri Nagpal Authorised Representative for the respondent pressed into service many grounds in support of his contention that the strike resorted to by the workman was illegal and unjustified. He made a pointed reference to the Managing Director's letters dated 30th September, 1980 and 1st October, 1980, copies of which, are Exhibit MW-2/A and MW-2/B inviting representatives of the workers union for negotiation and also requesting the workmen not to resort to strike. He further contended that no attempt was made by the workmen to refer the dispute to the Labour Officer-cum-Conciliation Officer as required under section 12 of the said Act and also there is not an iota of evidence on the file that the workmen ever approached the

Government of Haryana for referring their grievances as an industrial dispute to the Industrial Tribunal for adjudication as envisaged under section 10 of the said Act. A kindred contention raised by him was that since the workman did not claim wages for the strike period, so, there is no escape from the conclusion that the workman accepted the strike period as absence from duty and further more no demand of the workman was considered by the management after the workman had resumed his duty after the strike period. On the basis of these points Shri Nagpal contended that the strike resorted to by the workmen was illegal and unjustified and as such, the period of strike should be excluded for computing the number of working days. He also referred to 1979 *Lab. I.C.* 1079 *and AIR* 1960 S.C. 902. Observations made in the later authority are on peripheral points and as such are not exactly applicable to the controversy in hand. Firstly the strike resorted to by the work force of the respondent was not declared illegal the Government of Haryana, but even so, assuming that the strike was illegal, even then participation in an illegal strike may not necessarily and in every case be punished with dismissal without proper enquiry being held. I am fortified in making these observations from the law laid down in **AIR 1961 S.C. 1158, Bata Shoe Company (P) Ltd.,** *versus* **D.N. Gunguly and others.** Another Authority which can be referred with advantage was reported in **AIR 1960 S.C. 219 India General Navigation and Railway Co. Ltd., and another** *versus* their workmen. In this authority their Lordships of the Hon'ble Supreme Court observed that assuming it is open to the management to dismiss a workman who has taken part in an illegal strike, in determining the question of punishment, a clear distinction has to be drawn between those workmen, who not only joined in such strike but also took part in obstructing the loyal workman from carrying on their work or took part in violent activities. In the present case, there is not an iota of evidence on record that the present workman resorted to any violence during the strike period or he had in any obstructed any loyal workmen from carrying on their duties. The punishment of dismissal can be meeted out only after proper enquiry by the management, in case the strike had been declared illegal. So, both these issues are answered against the respondent. Since the controversy in hand has been decided primarily on accepted facts, I need not discuss the oral evidence adduced by the parties. In the later authority handed out by the Hon'ble Supreme Court of India reported in **1985 Lab. I. C. 1733 between H.D. Singh** *versus* **Reserve Bank of India and others** their Lordships while computing the number of working days put in by the workman had included fifty two sundays and seventeen holidays. The accepted case of the respondent is that the petitioner had put in 230 days of actual work with the respondent as is borne out from the chart Exhibit MW-1/A. If sundays and holidays are counted the number of working days put in by the petitioner, will reach the figure of 300. So, the respondent could not have terminated the services of the petitioner without giving all the benefits as envisaged under section 25F of the said Act, because his termination was "retrenchment" as defined in section 2(oo) of the said Act. Admittedly no prior notice, pay or retrenchment compensation was paid to him by the respondent. So, his termination was illegal and unjustified. The law is settled that once an order of termination is displaced by the Court, it must lead to reinstatement with full back wages but there may be certain exceptional circumstances, which may force the Court to make a departure from the accepted rules. It is a common knowledge that Milk Plants in the State of Haryana are always in the red and reasons of the same may be many and so, it would not be equitable to award full wages to the workman. So, taking into consideration the totality of the circumstances of the case, I order the reinstatement of the workman with continuity of service and 25% back wages. The reference is answered and returned accordingy with no order as to cost.

Dated : 7th February, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endorsement No. 130-83/358, dated 10th March, 1986

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.